IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF AUGUST
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION Nos.6585 AND 6614 OF 2006

WRIT PETITION Nos.6585 OF 2006

Between:

Mrs.Sriram Ramana, W/o. Vijay,
R/o.Sareen Nagar, Kurnool.

..... PETITIONER

AND

The Sub-Inspector of Police,
Taluq Police Station, Nuzvid,
Krishna District and others.

....RESPONDENTS

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O R D E R

(Per Sri Justice J.Chelameswar)

These two writ petitions are filed by the same petitioner-Mrs.Sriram Ramana. According to the petitioner her brother one Ganta Durga Prasad and her brother-in-law Bandi Rama Krishna aged 16 and 13 years respectively went to Akeevidu to visit one Bhagyamma who is said to be the paternal aunt of the petitioner. It is also the case of the petitioner that the maternal grandmother of the petitioner, Mrs.Akula Pentamma also went to Akeevidu to call on the above-mentioned Bhagyamma. In substance, all the above-mentioned persons went to the house of Bhagyamma who is alleged to be ailing.

It is the further case of the petitioner that all the above-mentioned three persons viz., Mrs.Akula Pentamma on 29.03.2006 and the other two alleged detenus - Ganta Durga Prasad and Bandi Rama Krishna on 27.02.2006 were whisked away by the Police and illegally detained without being produced before any Court as required under law. It is to be mentioned here that in both the writ petitions the Sub-Inspector of Police, Taluq Police Station, Nuzvid is shown as 1st respondent and two constables - Mr.Murali and Mr.Sambaiah attached to Machilipatnam Crime Police Station are shown as Respondent Nos.2

and 3. Both the writ petitions were initially listed before a Division Bench of this Court on 04.04.2006 on which date, a representation was made that the learned Advocate General took notice and the writ petitions were adjourned for counters of the respondents. The matters were again listed on 13.04.2006, on which date it is recorded in the proceeding sheet that a counter was filed and the learned counsel for the petitioner wanted to file a rejoinder, and therefore, the matters were directed to be listed after summer vacation. Accordingly, the writ petitions were listed on 05.06.2006.

When the matters were taken up for hearing, we noticed that the counter-affidavit of Mr.R.Krishna Murthy - Circle Inspector of Police, Nuzvid Circle was filed into the Court on 13.04.2006. The said affidavit was sworn to on 11.04.2006. He stated in the affidavit that he is the Investigating Officer in Crime No.112 of 2005 of Nuzvid Rural Police Station, which was registered for the offence under Section 395 IPC. The substance of the counter-affidavit is that on 12.09.2005 at about 0400 hours a complaint was lodged by Mr.Rachamadugu Krishnaiah Narayanamurthy stating that on the intervening night of 11/12.09.2005 at 0045 hours, seven or eight unknown culprits entered into the premises of a factory called Srinivasa Tiles Factory, beat the watchman and tied him up. Thereafter, they also attacked him and his family and committed the offence of dacoity, the details of the crime may not be necessary for the present purpose. The counter-affidavit further stated that on 31.03.2006 on receipt of information, the said Durga Prasad – one of the alleged detenus was apprehended. Some stolen property was seized from him and he was arrested and produced before the concerned Magistrate. Insofar as second detenu – brother-in-law of the petitioner is concerned, it is stated in the counter-affidavit filed by the Circle Inspector that the alleged detenu was not required in connection with any crime within the jurisdiction of the deponent of the affidavit, and therefore, the alleged detenu was never arrested. In sofar as the alleged third detenue - Akula Pentamma is concerned, similar

statement was made as in the case of the brother-in-law of the petitioner Bandi Rama Krishna.

Since, none of the three respondents in both the writ petitions filed counter-affidavit, the allegations made in the writ petitions insofar as the arrest and illegal detention of the alleged detenus went un-rebutted and insofar as the other detenu Durga Prasad is concerned, the allegations relating to illegal detention on 27.03.2006 and from 29.03.2006 to 31.03.2006 stood unrebutted, and therefore, for the reasons recorded in the order dated 05.06.2006 we directed the Superintendent of Police, Krishna, to initiate disciplinary action against the three respondents in these two writ petitions. Subsequently, a communication dated 7th July, 2006 was received by the Registry of this Court from the Superintendent of Police, Krishna, and by an order dated 31.07.2006, we had observed that the state of affairs regarding the same was not happy, and at that stage, the learned Advocate General sought time to enable him to personally look into the matter and thereafter these two writ petitions were adjourned.

Today when the matters are taken up, the learned Advocate General placed before the Court the proceedings of the Superintendent of Police, Krishna, dated 23.06.2006 by which the Superintendent of Police, Krishna, initiated disciplinary proceedings against the respondents, and one Mr.Murali Krishna who was Sub-Inspector of Police, Nuzvid at the relevant point of time. Further details of the disciplinary proceedings may not be necessary for the purpose of deciding these writ petitions.

On behalf of the Sub-Inspector of Police, Nuzvid Rural P.S.-1st respondent, the learned Advocate General submitted that the failure on the part of the Sub-Inspector of Police in filing a counter-affidavit in the writ petitions is not intentional, but due to misunderstanding of the procedure. The learned Advocate General stated before us that the

said Sub-Inspector in fact called upon the Advocate General for the purpose of preparing counter-affidavits in these two writ petitions, but could not proceed further in view of certain observations made by another Division Bench of this Court earlier to the effect that in all the Habeas Corpus matters, a superior officer either the Investigating Officer or somebody superior to him should file the counter-affidavits. The office of the Advocate General informed the Sub-Inspector that the counter-affdavits should be filed by the Investigating Officer and therefore, the Circle Inspector Mr.R.Krishna Murthy filed the counter-affidavit.

Insofar as Respondents 2 and 3 are concerned, Sri B.Adinarayana Rao appearing for Respondents 2 and 3 submitted that Respondents 2 and 3 are *eo nomine* parties and they were never served with the notice nor rule nisi in these two writ petitions was ordered till today and therefore it is not the fault of the respondents 2 and 3 in not filing the counters in the said two writ petitions.

We have verified the record of this Court in view of the assertion by the learned counsel for the Respondents 2 and 3 that no rule nisi has been despatched to Respondents 2 and 3 so far. However, the fact remains that when the Habeas Corpus matters come up for admission and notice is taken on behalf of the learned Advocate General, normally this Court is not ordering notice otherwise. However, it was not pointed out at the admission stage of the writ petitions that Respondents 2 and 3 are *eo nomine* parties and therefore they are required to be put on notice directly.

Coming to the submission of the learned Advocate General, whatever be the understanding by the respondents in the instant writ petitions and whether such an understanding is of their own or based on some advice, we make it clear and we believe it to be the settled legal position in this country that the respondents do owe an obligation of filing counters explaining their cases when they are put

on notice by the Court. When we say that they do owe such obligation, we are not curtailing their liberty not to file counters, if only they are willing to face consequences arising therefrom. An Officer superior to the respondents in any given case wishes to file a counter-affidavit because he believes that such a course of action would be just and proper having regard to the facts and circumstances of the case, or such counter is filed in obedience to any or general or specific direction of this Court, an appropriate statement is required to be made whether such an affidavit is being filed on behalf of the deponent alone or on behalf of the other respondents and whether the deponent of the affidavit is duly authorized to give such an affidavit on behalf of the other respondents also. But such safeguard is not followed in the present case, which compelled the Court to embark upon a detailed enquiry into the matter. We make it clear that henceforth wherever a person other than the respondent who is not party to the proceeding is filing counter-affidavit, the above-mentioned procedural aspects must strictly be complied with as these aspects of procedure do have a significant role to play in the matter of ascertaining the truth of the allegations made in the writ petition or in the counter-affidavits.

In view of the statement of the learned Advocate General that the 1st respondent did in fact visited the Advocate General's Office for preparing the counter-affidavit and the circumstances in which he did not file the counter as detailed earlier, and in view of the fact that the respondents 2 and 3 were not served with the rule nisi, we are of the opinion that no useful purpose would be served by proceeding further in the case as the disciplinary action against these respondents and also the other proceedings were initiated pursuant to the order of this Court dated 05.06.2006, we direct the Superintendent of Police, Krishna to drop the proceedings initiated against the respondents.

All the respondents subsequently filed counter-affidavits denying the allegations that they had arrested anyone of the detenus

prior to 31.03.2006 as alleged by the petitioner. The learned counsel for the petitioner also stated that except the detenue Durga Prasad, the other two persons are moving freely, and insofar as Mr.Durga Prasad is concerned, he is admittedly arrested and produced before the Magistrate concerned.

In the circumstances, we do not see any reason to proceed further in these two writ petitions. Accordingly, these two writ petitions are closed.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

7TH AUGUST, 2006
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
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(Per Sri Justice J.Chelameswar)

7TH AUGUST, 2006